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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/500,889

07/07/2004

Ralf Noerenberg

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02/01/2008

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.

1940 DUKE STREET

ALEXANDRIA, VA 22314

EXAMINER

MRUK, BRIAN P

ART UNIT

PAPER NUMBER

1796

NOTIFICATION DATE

DELIVERY MODE

02/01/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/500,889	<b>Applicant(s)</b> NOERENBERG ET AL.	
	<b>Examiner</b> Brian P. Mruk	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2008.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 16, 18-20, 24, 27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16, 18-20, 24, 27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 17, 2007 has been entered.
2. This Office action is in response to Applicant's Remarks filed January 16, 2008 and December 17, 2007. Claims 16, 20 and 27-28 have been amended. Claims 17, 23 and 26 have been cancelled. Currently, claims 16, 18-20, 24 and 27-28 remain pending in the application.
3. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office actions, Paper Nos. 20060418, 20061002, 20070215, and 20070812.
4. The rejection of claims 16, 18-20, 24 and 27-28 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Evers et al, EP 616,026, is maintained for the reasons of record.

5. The rejection of claims 16, 18-20, 24 and 27-28 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Oldenhove et al, EP 620,270 is withdrawn in view of applicant's amendments and remarks.

6. The rejection of claims 16, 18-20, 24 and 27-28 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,680,412 is withdrawn in view of applicant's amendments and remarks.

### ***Response to Arguments***

7. Applicant's arguments filed May 29, 2007 have been fully considered but they are not persuasive.

Applicant argues that Evers et al, EP 616,026, does not teach or suggest in general a mixture that contains an ethoxylate of a C<sub>4-6</sub> alkylglycol or diglycol and a C<sub>9-20</sub> alkanol ethoxylate. However, the examiner respectfully disagrees. Specifically, the examiner maintains that Evers et al clearly discloses that their composition contains a long chain surfactant that is preferably a long chain (i.e. a C<sub>11-24</sub>) alkyl ethoxylate (see page 2, line 58-page 3, line 19) and a short chain nonionic surfactant, such as a C<sub>6</sub> alkyl ethoxylate that contains 3-8 moles of ethoxylation (see page 3, lines 20-31), per the requirements of the instant invention. Furthermore, the examiner asserts that "The fact remains that one of ordinary skill informed by the teachings of Evers et al would not have had to choose judiciously from a genus of possible combinations to obtain the very

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subject matter to which appellant's composition per se claims are directed." *In re Sivaramakrishnan*, 213 USPQ 441 (CCPA 1982).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Mon-Thurs (7:00 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Bpm

Brian P Mruk  
January 26, 2008

*Brian P. Mruk*  
Brian P Mruk  
Primary Examiner  
Art Unit 1796